IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9145 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AVINASH KRISHNAKUMAR Z

Versus

COMMISSIONER OF POLICE,

Appearance:

MS KD PARMAR for Petitioner

MR UR BHATT, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/10/2000

ORAL JUDGEMENT

The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 03/05/2000 (Annexure - A) passed by respondent No.1 in respect to detenu - petitioner in exercise of his powers conferred upon him under SEc.3(2)

of the Gujarat Prevention of Antisocial Activities Act, 1985 (in short "the Act").

2. As per the papers of grounds of detention, the petitioner-detenu is "a dangerous person" within the meaning of section 2(c) of the Act, and further that activities of the petitioner are prejudicial to the maintenance of the public order.

3. To arrive at a subjective satisfaction, the detaining authority has placed reliance on four cases for offences punishable under different sections of Indian Penal Code which are referred to in the grounds of detention and out of said four cases, the last case was registered on 05/03/2000 in Pandesara Police Station, Surat. That Case No.II 117/2000 was registered for offences punishable under sections 323, 504, 506(2) and 302 of Indian Penal Code in Pandesara Police Station, Surat. The detaining authority has placed reliance on statements of three witnesses whose identity has not been disclosed by claiming privilege under section 9(2) of the Act. That statements were recorded on 22/10/1999, 22/11/1999 and 12/03/2000 respectively. That statements were verified by the detaining authority on 28/04/2000 and the order of detention has been passed on 03/05/2000 and that order is challenged in this writ petition.

4. Though rule has been served upon each respondent, respondents have not filed affidavit-in-replies, in reply to this writ petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenging an order of detention which is the subject matter of this writ petition.

5. Ms.K. D. Parmar, learned advocate for the petitioner has argued that out of four cases, last cas was registered on 05/03/2000 and the order of detention has been passed on 03/05/2000. There is a considerable delay of two months. The question is not of delay but important question is with regard to explanation of such delay in passing an order of detention against detenu. Herein this case, the detaining authority has not filed affidavit-in-reply to explain the delay. Ms.K. D. Parmar, learned advocate for the petitioner has cited an authority of ELESH NANDUBHAI PATEL v. C.P.SINGH, COMMISSIONER OF POLICE, AHMEDABAD CITY & ORS. reported in GLR 1997 (2) 1375, wherein it has been held that unexplained delay makes a ground of detention not proximate vitiating the order of detention itself. In this case also the question of delay of two months in passing an order of detention is not explained by the

detaining authority. Thus, the order of detention itself is bad in law and illegal.

6. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 03/05/2000 passed by respondent No.1 in respect to detenu is set aside. The detenu is ordered to be released forthwith if he is not wanted in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H. H. Mehta,J.)
(vrpanchal)